UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 2:18-cr-00030-1
	)	
KOREY STEWART,	)	
	)	
Defendant.	)	

OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS
(Doc. 163)

Defendant Korey Stewart is charged in a one count Superseding Indictment alleging conspiracy to distribute heroin, fentanyl, cocaine, and cocaine base in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(B), 841(b)(1)(C), and 846. On September 10, 2018, Defendant filed a motion to suppress (Doc. 163), contending that his arrest in August of 2015 violated the Fourth Amendment to the United States Constitution because it was not supported by probable cause. He seeks suppression of all evidence seized as a result including the statements he made following his arrest. The government opposes the motion.

On December 11, 2018, the court held an evidentiary hearing at which Drug Enforcement Agency ("DEA") Special Agent Mark Persson ("SA Persson"), DEA Special Agent Brian Villella ("SA Villella"), DEA Special Agent Timothy Hoffmann ("SA Hoffmann"), and Defendant testified. On January 7, 2019, the parties filed supplemental briefing at which time the court took the pending motion under advisement.

Defendant is represented by David F. Kidney, Esq. and Avi J. Springer, Esq. The government is represented by Assistant United States Attorneys Eugenia A. Cowles, Jonathan Ophardt, and Spencer Willig.

I. Findings of Fact.

The government has established the following facts by a preponderance of the evidence. On August 27, 2015, as part of an interdiction detail, DEA agents were conducting surveillance of a known heroin user who had arrived in a vehicle with a female passenger at the La Quinta hotel in South Burlington, Vermont. The known heroin user was later identified as Cody Sargent. SA Persson, an experienced DEA Agent, was part of the interdiction detail. Based on his observations at the La Quinta hotel, he followed Mr. Sargent's vehicle to the Cumberland Farms gas station in Colchester, Vermont. At the gas station, SA Persson observed Mr. Sargent exit his vehicle and enter the vehicle of a female, later identified as Stephanie Banfield. A few moments later, Mr. Sargent exited Ms. Banfield's vehicle and returned to his vehicle.

SA Persson and DEA Special Agent Tom Doud ("SA Doud") approached Ms. Banfield and questioned her. She initially denied selling heroin to Mr. Sargent and stated she had money in her vehicle which was from her father and from an unemployment check. She later admitted that she had just engaged in a heroin transaction with Mr. Sargent and provided substantial information regarding her drug dealing activities in three interviews. While Ms. Banfield was questioned by SAs Persson and Doud, other DEA agents questioned Mr. Sargent who stated that he had purchased heroin from Ms. Banfield. Agents searched Mr. Sargent's car, found what they suspected to be heroin, and Ms. Banfield was arrested. A search of her car yielded plastic baggies, suspected heroin, and $900 in cash. A search of Ms. Banfield's person yielded approximately $2,623 in cash in her bra.

In the course of interviews by law enforcement, Ms. Banfield admitted that she was a heroin user and drug dealer. She identified two men, known to her as "T" and "Skip," as her primary sources for heroin and crack cocaine. She stated that she would typically contact Skip or T to have narcotics delivered to her by a "runner." She described Skip as being "the boss" for whom T worked. She noted that Skip had approximately six to eight runners working for him as well as various females who transported drugs from New York City to Vermont. Although Skip would typically

distance himself from the drugs he distributed and would leave drugs at a runner's residence rather than hold them himself, she saw Skip occasionally when he was in Vermont. She advised that Skip and T sometimes used the same phone to conduct drug transactions with their customers. She provided the agents with two telephone numbers for T and one for Skip.

Ms. Banfield described T as a tall, skinny, African-American male from New York with no tattoos, dreadlocks, or facial hair. She further advised that T drove a white Volvo with out-of-state license plates from which the front license plate was missing. She noted that she had seen T the day before and that he would "often" show up at her house and on occasion was accompanied by Skip. She identified Skip as an African-American male from New York. Ms. Banfield told SA Persson that a woman named "Amber" was associated with T and Skip and that she had made two deposits of drug proceeds into Amber's bank account, one in the amount of $8,000 and the other for approximately $8,400. Ms. Banfield noted that she had received a text from Skip or T advising her how to make the deposits and providing Amber's account number. She reported that an individual named "Raj" had also made deposits into Amber's account. Ms. Banfield asserted that she had drugs and money belonging to T in her apartment at 79 Susie Wilson Road, Essex Junction, Vermont and that T had given her twenty bags of heroin the day before, for which she owed him $1,600. Ms. Banfield stated that there was a large quantity of crack cocaine in her couch and a TD Bank receipt from a deposit of drug proceeds into Amber's account located in one of her closets. Ms. Banfield provided names, phone numbers, and certain other identifying details regarding approximately seven other drug associates of Skip and T.

Ms. Banfield told law enforcement that she was selling drugs on a daily basis and explained that after she sold the drugs T provided her, T would either come to her residence to collect the proceeds from her or she would deposit the money into Amber's bank account. She explained that she and T had an agreement whereby he sold narcotics to her at a flat rate and she was entitled to keep any proceeds she made beyond that rate. She stated that T would be stopping by to collect money, but she was unsure when he

would arrive. Ms. Banfield provided written consent for law enforcement to search her apartment.

SA Persson relayed the information from Ms. Banfield to members of the interdiction team. A search team proceeded to Ms. Banfield's apartment which was located in a two-building apartment complex with twelve units on a dead-end road accessed via Susie Wilson Road which terminates approximately a quarter of a mile past the complex. The parking area in front of the complex has spaces for approximately twenty vehicles. At the time of the search, there were approximately ten other vehicles in the parking lot.

At approximately 7:30 p.m. on the evening of August 27, 2015, nine law enforcement officers searched Ms. Banfield's apartment. During their search, SA Villella, the Resident Agent in Charge of the Burlington DEA office, conducted surveillance from an unmarked law enforcement vehicle on the dead-end portion of Susie Wilson Road with his vehicle parked facing the driveway of Ms. Banfield's apartment. He was watching for individuals who might approach Ms. Banfield's apartment during the search based on information relayed to him by SA Persson. During an approximately half-hour period of surveillance, SA Villella observed only one vehicle drive past him as it departed from another apartment complex.

Inside Ms. Banfield's apartment, law enforcement agents located a quantity of crack cocaine in her couch and crack cocaine and cocaine elsewhere along with a tan powdery substance in her bedroom that Ms. Banfield had not previously mentioned. Although she had estimated she had approximately $1,000 in her apartment, agents located $2,323 in a pink wallet. In Ms. Banfield's bedroom closet, the agents located a TD Bank receipt indicating an $8,460 deposit. They also found a Western Union receipt.

While agents were searching Ms. Banfield's apartment, SA Villella observed somebody driving towards Ms. Banfield's apartment who matched the description the interdiction team had provided him. The person was operating a white Volvo with a Florida back license plate and a missing front plate. The white Volvo turned into the driveway leading to Ms. Banfield's apartment complex and parked facing Ms. Banfield's

apartment with its headlights illuminated. In less than two minutes, SA Villella saw a brown Nissan Maxima with out-of-state license plates pull into the driveway to the apartment complex and park next to the white Volvo, approximately two car widths away. This vehicle also faced Ms. Banfield's apartment with its headlights illuminated. SA Villella could not see how many people were in the Nissan Maxima or what they looked like. He advised the search team that two vehicles were outside, and that the occupants remained in the vehicles. He directed them to make contact with the vehicles' occupants.

After receiving SA Villella's report, the agents inside Ms. Banfield's apartment stopped their search and, due to a concern that the individuals outside the apartment might be armed, put on their tactical gear. A few minutes later, at approximately 8:00 p.m., they exited the apartment building in two groups and approached both vehicles. Upon exiting the apartment building, the agents could see the vehicles which were facing them, parked approximately 100 feet away, but because it was growing dark outside, they were unable to see into the vehicles or determine the number of occupants. The agents ran toward the vehicles due to a concern that the vehicles would leave or attempt to hit them. SA Hoffmann credibly testified that the law enforcement agents drew their weapons to ensure officer safety as they were leaving a known drug house and one of the vehicles was associated with Ms. Banfield's source of supply. An agent with a drug detection canine was among the agents who approached the vehicles.

As agents ran toward the vehicles they shouted "police," "hands up," and "get out of the car." After opening the driver's side door of the Nissan Maxima, agents ordered the female African-American operator out of the vehicle; the female complied and was handcuffed. Seconds later, SA Hoffmann asked the woman her name and she replied that her name was Amber and produced a Connecticut driver's license indicating her name was Amber Williams-Eason. At the same time, agents approached the passenger side of the Nissan Maxima, opened the door, and pulled Defendant out of the vehicle, placed him on the ground, and handcuffed him there. Thereafter, Defendant provided agents with a

New York driver's license with the name Corethious Bryant. At the time, law enforcement had no reason to believe Defendant's identification was false.

Defendant, Ms. Williams-Eason, and the driver of the white Volvo, who was identified as David Williams, were arrested and transported to a police station for processing.[1] At the police station, Defendant was photographed and fingerprinted. Ms. Banfield identified Defendant from his photograph as "Skip." Law enforcement used fingerprints and a database to identify Defendant as Korey Stewart after his release.

In his testimony, Defendant confirmed that he drove to 79 Susie Wilson Road on the date in question with Amber Williams-Eason. He contends, however, that the vehicle in which he was travelling was a full football field behind the white Volvo and parked next to a SUV. He contends that there was space for two vehicles between the Volvo and the Nissan Maxima. Defendant testified that he was pulled out of the Nissan Maxima by law enforcement agents with "a little nudge" but was compliant with their requests to get on the ground. Somewhat inconsistently he testified that he was grabbed by the collar of the shirt, forced onto the ground, and handcuffed within seconds. He was on the ground for a short period of time before he was permitted to stand up. When he was asked for identification, he indicated it was in his pocket. The agents retrieved a New York identification card from Defendant.

II. Conclusions of Law and Analysis.

A. Whether the August 27, 2015 Stop of Defendant Was Unconstitutional.

The Fourth Amendment protects the "right of the people to be secure . . . against unreasonable searches and seizures[.]" U.S. Const. amend. IV. The Supreme Court has held that warrantless searches of persons or private property "are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote

[1] Defendant seeks suppression of physical evidence that was found in the Nissan Maxima, however, he does not appear to have standing to contest the search of that vehicle. *See Rakas v. Illinois*, 439 U.S. 128, 134 (1978) ("A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.").

omitted). One such exception was established in *Michigan v. Summers*, 452 U.S. 692 (1981). There, the Supreme Court "recognized three important law enforcement interests that, taken together, justify the detention of an occupant who is on the premises during the execution of a search warrant: officer safety, facilitating the completion of the search, and preventing flight." *Bailey v. United States*, 568 U.S. 186, 194 (2013). The Court explained that minimizing the risk of harm to officers executing a search warrant was of "great[] importance" because "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence" and "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Summers*, 452 U.S. at 702-03.

Summers addressed law enforcement's right to detain occupants, however, as the Third Circuit explained: "[a]lthough *Summers* itself only pertains to a resident of the house under warrant, it follows that the police may stop people coming to or going from the house if police need to ascertain whether they live there." *Baker v. Monroe Twp.*, 50 F.3d 1186, 1192 (3d Cir. 1995). In *United States v. Bohannon*, 225 F.3d 615, 617 (6th Cir. 2000), the Sixth Circuit reached a similar conclusion regarding a non-occupant who approached the residence being searched, explaining that the *Summers* exception, "especially to protect officers' safety, [was] applicable" "because [defendant] showed every intention of walking into the house where armed officers were in the process of completing the search, his safety was also at risk. Preventing his unexpected entry into the trailer was for the safety of everyone involved." *Id.*

Summers is not confined to the place to be searched but includes its vicinity. *See Summers*, 452 U.S. at 702 n.16 ("We do not view the fact that respondent was leaving his house when the officers arrived to be of constitutional significance. The seizure of respondent on the sidewalk outside was no more intrusive than the detention of those residents of the house whom the police found inside."); *United States v. Vite-Espinoza*, 342 F.3d 462, 468 (6th Cir. 2003) ("The defendants point out that . . . they were not entering or leaving the search residence but were merely present in its backyard. Indeed,

this circumstance does render the inference of involvement with the criminal activity inside the house weaker, but only slightly so."). Seizures outside the "immediate vicinity" of the place being searched are generally not included within the exception. *See Bailey*, 568 U.S. at 199 (ruling that "of the three law enforcement interests identified to justify the detention in *Summers*, none applies with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises to be searched.").

Although the search in this case was a consent search rather than one pursuant to a warrant, the *Summers* justifications of officer safety, orderly completion of the search, and preventing flight remain intact. *See United States v. Enslin*, 327 F.3d 788, 797 n.32 (9th Cir. 2003) ("Although *Summers* involved a search pursuant to a search warrant rather than a consent search to execute an arrest warrant, much of the analysis remains applicable.").

Neither a reasonable suspicion of criminal activity nor probable cause are required for a detention pursuant to *Summers*. "An officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" *Meuhler v. Mena*, 544 U.S. 93, 98 (2005) (quoting *Summers*, 452 U.S. at 705 n.19). Accordingly, "the police of course have the authority to detain occupants of premises while an authorized search is in progress, regardless of individualized suspicion. They also have the authority to make a limited search of an individual on those premises as a self-protective measure." *Rivera v. United States*, 928 F.2d 592, 606 (2d Cir. 1991) (citation omitted).

> The [Supreme Court's] reasoning and conclusions . . . in applying the *Summers* rule go quite far in allowing seizure and detention of persons to accommodate the necessities of a search. There, the person detained and held in handcuffs was not suspected of the criminal activity being investigated; but, the Court held, she could be detained nonetheless, to secure the premises while the search was underway.

Bailey, 568 U.S. at 195.

In this case, the law enforcement agents who seized Defendant had a reasonable concern for their safety as well as a "legitimate law enforcement interest in preventing flight in the event that incriminating evidence [wa]s found." *Summers*, 452 U.S. at 702. At the time Defendant was detained, law enforcement agents had found drug proceeds belonging to a person who was expected to approach Ms. Banfield's apartment to retrieve them. This created a risk of flight if the suspected person was not detained. Defendant's immediate seizure was further justified by the need to minimize the risk of harm to the agents involved in the search.[2] In order to secure the premises and preserve evidence, the agents were thus entitled to take "unquestioned command of the situation" by seizing and detaining Defendant who was located in the vicinity of Ms. Banfield's apartment. *Summers*, 452 U.S. at 702.

The brandishing of weapons, the use of handcuffs, and a demand for identification while agents secured the scene were also permissible.[3] *See United States v. Alexander*, 907 F.2d 269, 272 (2d Cir. 1990) ("A law enforcement agent, faced with the possibility of danger, has a right to take reasonable steps to protect himself . . . regardless of whether probable cause to arrest exists."); *Stewart v. United States*, 1996 WL 387219, at *3 (2d

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[2] *See Baker v. Monroe Twp.*, 50 F.3d 1186, 1191 (3d Cir. 1995) ("The dangerousness of chaos is quite pronounced in a drug raid, where the occupants are likely to be armed, where the police are certainly armed, and the nature of the suspected drug operation would involve a great deal of coming and going by drug customers."); *United States v. Patterson*, 885 F.2d 483, 485 (8th Cir. 1989) ("The possible danger presented by an individual approaching and entering a structure housing a drug operation is obvious. In fact, it would have been foolhardy for an objectively reasonable officer not to conduct a security frisk[.]").

[3] *See United States v. Fullwood*, 86 F.3d 27, 29-30 (2d Cir. 1996) ("As the officers arrived to execute the warrant, [defendant] was outside the residence and was entering a vehicle. It was permissible for the officers . . . to detain him[.] . . . It was also prudent for the officers to handcuff [defendant] until they could be certain that the situation was safe."); *Torres v. United States*, 200 F.3d 179, 184-85 (3d Cir. 1999) (holding officers who pointed their guns at defendant and handcuffed him "acted lawfully in their treatment of [defendant] during the execution of the search"); *see also Palacios v. Burge*, 589 F.3d 556, 564 (2d Cir. 2009) ("A search, or in this case, an identification procedure, may be reasonable where privacy concerns are minimal, the government interest is furthered by the intrusion, and the intrusion is properly tailored in time and scope to this interest.").

Cir. July 11, 1996) (holding handcuffing and forty-minute detention of residents while police executed a search warrant "was justified").

For the reasons stated above, Defendant's motion to suppress on the basis that law enforcement's seizure of his person after they removed him from the vehicle was a de facto arrest is DENIED.

B. Whether Law Enforcement Agents Had Probable Cause to Arrest Defendant.

Defendant challenges whether his arrest was supported by probable cause, pointing out that law enforcement had no reason to believe that the identification he provided to the agents was false and no other reason to suspect him of criminal activity. The government counters that the detention of Defendant was supported by probable cause or, in the alternative, a reasonable suspicion of criminal activity. *See United States v. Spotts*, 275 F.3d 714, 719 (8th Cir. 2002) ("When a suspect approaches . . . a likely drug house that is being searched, moderate evidence connecting that person with the house has been held to support a *Terry* stop."). As Defendant was actually arrested, only probable cause would authorize his being taken into custody and transported to a police station for processing.

"[T]he Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense." *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979). "Probable cause exists where the arresting officer has knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime." *United States v. Delossantos*, 536 F.3d 155, 158 (2d Cir. 2008) (internal quotation marks omitted).

Prior to Defendant's arrest, two vehicles arrived at Ms. Banfield's apartment in close temporal and physical proximity. One of those vehicles and its driver closely matched the description of the vehicle Ms. Banfield stated was driven by her source of supply and SA Villella relayed that information to the search team. Only one other vehicle had been observed during surveillance on the dead-end road, and that vehicle had

departed from a different apartment complex. Both vehicles pulled in and parked in the same manner with their headlights illuminated, facing Ms. Banfield's apartment. Their occupants did not exit the vehicles. Based upon Ms. Banfield's statement that she expected her source of supply to visit her apartment to collect a drug debt, under *Summers*, it was reasonable for law enforcement to proceed as if the vehicles' occupants were there for drug related activity. *See Bohannon*, 225 F.3d at 617 (upholding legality of detention under *Summers* on the basis that "[t]he residence searched was a suspected methamphetamine lab. Therefore, an officer could reasonably infer that a customer or distributor would arrive on the premises.").

Although Defendant challenges Ms. Banfield's reliability as a source of information, her statements to law enforcement were detailed, against her penal interest, and largely corroborated. *See United States v. Canfield*, 212 F.3d 713, 719-20 (2d Cir. 2000) (observing "if an informant's declaration is corroborated in material respects, the entire account may be credited, including parts without corroboration") (internal quotation marks omitted); *see also United States v. Rowell*, 903 F.2d 899, 903 (2d Cir. 1990) (finding that an informant's reliability was "indicated by his statement, made against his penal interest, that he had personally purchased cocaine" from the defendant). Ms. Banfield described her own daily drug dealing, the method by which she was paid, the number and use of runners, and the method by which drugs were brought to Vermont. She provided telephone numbers for both T and Skip as well as telephone numbers and certain identifying information for approximately seven of their drug associates. *See United States v. Clark*, 657 F.3d 578, 582 (7th Cir. 2011) ("Specific information from a person who has turned on her partner in crime and told the police about their malfeasance (thus implicating herself as well as her partner) goes a long way toward establishing probable cause.").

In their search of Ms. Banfield's apartment, law enforcement located drug proceeds, narcotics, and the deposit slip which she had advised they would find there. In addition to her relatively detailed description of T and her vague description of Skip, Ms. Banfield had described a female African-American named Amber as one of their drug

associates and noted that both she and Raj made deposits into Amber's account at Skip's and T's direction.

When law enforcement approached the Nissan Maxima, they discovered an African-American female operator, ordered her out of the vehicle, and asked for identification. *See United States v. Adegbite*, 846 F.2d 834, 838 (2d Cir. 1988) ("Having legitimately stopped the truck, the agents did not convert the stop into a seizure by . . . requesting identification of the defendants."). When the woman identified herself as Amber and provided a Connecticut driver's license, the agents had reason to believe she was the same Amber into whose account Ms. Banfield and others had deposited drug proceeds. They also had reason to believe she had arrived in tandem with the operator of the white Volvo whom they reasonably suspected was T's and Ms. Banfield's source of supply. *See United States v. Cruz*, 2008 WL 11384074, at *3-4 (N.D. Ga. Jan. 18, 2008) (observing that "surveillance of Defendant and others driving vehicles in tandem to a suspected drug meeting place" contributed to finding of probable cause); *United States v. Laidlaw*, 2010 WL 382551, at *6 (D. Conn. Jan. 27, 2010) (finding that the "timing and manner" in which the vehicles "traveled to the same location" supported a conclusion that the vehicles were travelling in tandem).

Defendant, who was Amber's sole passenger in the Nissan Maxima, was an African-American male from New York. At the time of his arrest, law enforcement was aware that T's boss was an African-American male from New York who occasionally accompanied T when T visited Ms. Banfield's apartment. Although Defendant could have been an innocent passenger, it was more probable that "there was more than a momentary, random, or innocent association with the other individuals involved in the drug transaction." *United States v. Pena*, 51 F. Supp. 2d 367, 371-72 (W.D.N.Y. 1999) (finding that although "the facts do not conclusively rule out the innocent bystander explanation[,]" there is generally no reason to invite a bystander "along to witness a serious crime."). It was thus reasonable to conclude that Amber's passenger was there to pick-up the drug proceeds Ms. Banfield owed to her source of supply.

"Probable cause does not require absolute certainty." *Boyd v. City of New York*, 336 F.3d 72, 76 (2d Cir. 2003). Nor is it negated by "an innocent explanation [that] may be consistent" with the same facts that support it. *Delossantos*, 536 F.3d at 161 (internal quotation marks omitted). Here, the totality of the circumstances would lead a reasonable person to believe that Defendant was a participant in criminal activity with T and Amber as they approached the scene of a known drug house at which law enforcement had just located both drugs and drug proceeds. Because Defendant's arrest was supported by probable cause, it did not violate the Fourth Amendment and his motion to suppress is DENIED.

CONCLUSION

For the reasons stated above, Defendant's motion to suppress is DENIED. (Doc. 163.)

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 8th day of February, 2019.

Christina Reiss, District Judge
United States District Court